

MONTOYA LAW, P.A. v. USDOJ-Crim

EXHIBIT 3

to

FOIA COMPLAINT



Edward Montoya
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Alexander Rundlet
arundlet@montoyalawfirm.com

April 26, 2018

Director, Office of Information Policy (OIP)
United States Department of Justice, Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Re: Freedom of Information Act Appeals re FOIA Request Nos. CRM-300647480; 1393128-000; and EOUSA-2018-001767/NYE.

Dear Director OIP:

This is an appeal under the Freedom of Information Act.

On January 5, 2018, I requested documents under the Freedom of Information Act from the Criminal Division of the United States Department of Justice (the "Agency"). My request was assigned the following identification number: **CRM-300647480**.

On February 5, 2018, I received a response to my request to the above-named agency in a letter signed by Amanda Marchand Jones, Chief, FOIA/PA Unit.

On January 5, 2018, I requested documents under the Freedom of Information Act from the New York Field Office, the Miami Field Office, and Central Office of the Federal Bureau of Investigation (the "Agency"). My request was assigned the following identification number: **1393128-000**.

On January 29, 2017, I received a response to my request to the above-named agency in a letter signed by David M. Hardy, Section Chief, Record/Information Dissemination Section/Records Management Division.

On January 5, 2018, I requested documents under the Freedom of Information Act from the United States Attorney's Office for the Eastern District of New York. My request was assigned the following identification number: **EOUSA-2018-001767/NYE**.

On January 26, 2018, I received an acknowledgment of my request but no further response from Vinay Jolly, Executive Office for United States Attorneys.

A copy of my FOIA requests and the agency determination(s) which is the subject of this appeal are attached for your convenience.

I appeal the denial of my requests because the documents requested are being withheld on an overly-broad and unreasonable application of Exemption 7(A). The requested documents related to *closed criminal investigations* that resulted in guilty pleas and final judgments entered in the United States District Court for the Southern District of New York on or about December 21, 2016.

"[D]isclosure, not secrecy, is the dominant objective" of the FOIA." *See Department of Air Force v. Rose*, 425 U.S. 352, 361 (1976). Because of this, the above-named Agencies have an obligation "to construe FOIA exemptions *narrowly* in favor of disclosure." *United States Dep't of Justice v. Landano*, 508 U.S. 165, 181 (1993); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151-52 (1989) (emphasis added).

The above-named Agencies have failed to narrowly apply the claimed and have failed to meet their heavy burden of establishing that the designated exemption categorically applies to exclude *all* information requested. *See* 5 U.S.C. § 552(a)(4)(B). They have likewise failed to identify a concrete, prospective investigations and the jurisdiction in which it is pending, and have failed to demonstrate specifically how each document or category of documents, if disclosed, would interfere with the specifically identified investigation.

Thank you for your consideration of this appeal.

Sincerely,

Alexander Rundlet

enclosures

**Documents re FOIA Request No. CRM-300647480
(To USDOJ-Criminal Division)**



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

VIA Electronic Mail

February 5, 2018

Alexander Rundlet, Esq.
Montoya Law
Suite 1200
9155 South Dadeland Boulevard
Miami, FL 33156
arundlet@montoyalawfirm.com

Request No. CRM-300647480

Dear Mr. Rundlet:

This responds to your Freedom of Information Act request dated January 5, 2018, and received in this Office on January 12, 2018, for records concerning Odebrecht, S.A. and Braskem, S.A.

After carefully considering your request, this Office has determined that all responsive records are exempt from disclosure pursuant to Exemption 7(A), which permits withholding records or information compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings. 5 U.S.C. § 552(b)(7)(A).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison at the (202) 616-0307 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked

or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in cursive script that reads "Amanda Marchand Jones".

Amanda Marchand Jones

Chief

FOIA/PA Unit



Edward Montoya
emontoya@montoyalawfirm.com
Alexander Rundlet
arundlet@montoyalawfirm.com

January 5, 2018

Amanda M. Jones
Acting Chief, FOIA/PA Unit
Criminal Division/Fraud Section
Department of Justice
Suite 1127, Keeney Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Re: FOIA Request re: *US v. Odebrecht, S.A.*, No. 16-643 (RJD); *US v. Branskem, S.A.*, No. 16-644 (RJD)

Dear FOIA Officer:

We write pursuant to the Freedom of Information Act to request the complete files in your possession regarding the investigation and prosecution of Odebrecht, S.A. and Branskem, S.A. which culminated in the Informations, Plea Agreements, and Judgments entered in the above-referenced criminal cases in the United States District Court for the Eastern District of New York.

For reference purposes, we attach the December 21, 2016 press release issued by the United States Department of Justice addressing these matters. The date range of the request is from the earliest date on which the subject investigation began until the date of the plea agreement on December 21, 2016.

This request is meant to address any and all materials not exempt from disclosure under FOIA relating to the above-referenced matters.

I am willing to pay up to \$100.00 for the processing of this request. I prefer documents in an electronic format. Please inform me if the estimated fees will exceed this limit before processing my request. I may be reached at (305) 445-9292 or arundlet@montoyalawfirm.com to address this Request.

Thank you in advance for your assistance.

Sincerely,
A handwritten signature in black ink, appearing to read 'Alexander Rundlet'.
Alexander Rundlet

attachments

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, December 21, 2016

Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History

Odebrecht S.A. (Odebrecht), a global construction conglomerate based in Brazil, and Braskem S.A. (Braskem), a Brazilian petrochemical company, pleaded guilty today and agreed to pay a combined total penalty of at least \$3.5 billion to resolve charges with authorities in the United States, Brazil and Switzerland arising out of their schemes to pay hundreds of millions of dollars in bribes to government officials around the world.

Deputy Assistant Attorney General Sung-Hee Suh of the Justice Department's Criminal Division, U.S. Attorney Robert L. Capers of the Eastern District of New York, Assistant Director Stephen Richardson of the FBI's Criminal Investigative Division and Assistant Director in Charge William F. Sweeney of the FBI's New York Field Office made the announcement.

"Odebrecht and Braskem used a hidden but fully functioning Odebrecht business unit—a 'Department of Bribery,' so to speak—that systematically paid hundreds of millions of dollars to corrupt government officials in countries on three continents," said Deputy Assistant Attorney General Suh. "Such brazen wrongdoing calls for a strong response from law enforcement, and through a strong effort with our colleagues in Brazil and Switzerland, we have seen just that. I hope that today's action will serve as a model for future efforts."

"These resolutions are the result of an extraordinary multinational effort to identify, investigate and prosecute a highly complex and long-lasting corruption scheme that resulted in the payment by the defendant companies of close to a billion dollars in bribes to officials at all levels of government in many countries," said U.S. Attorney Capers. "In an attempt to conceal their crimes, the defendants used the global financial system – including the banking system in the United States – to disguise the source and disbursement of the bribe payments by passing funds through a series of shell companies. The message sent by this prosecution is that the United States, working with its law enforcement partners abroad, will not hesitate to hold responsible those corporations and individuals who seek to enrich themselves through the corruption of the legitimate functions of government, no matter how sophisticated the scheme."

"This case illustrates the importance of our partnerships and the dedicated personnel who work to bring to justice those who are motivated by greed and act in their own best interest," said Assistant Director Richardson. "The FBI will not stand by idly while corrupt individuals threaten a fair and competitive economic system or fuel criminal enterprises. Our commitment to work alongside our foreign partners to root out corruption across the globe is unwavering and we thank our Brazilian and Swiss partners for their tireless work in this effort."

“No matter what the reason, when foreign officials receive bribes, they threaten our national security and the international free market system in which we trade,” said Assistant Director in Charge Sweeney. “Just because they’re out of our sight, doesn’t mean they’re beyond our reach. The FBI will use all available resources to put an end to this type of corrupt behavior.”

Odebrecht pleaded guilty to a one-count criminal information filed today by the Criminal Division’s Fraud Section and the U.S. Attorney’s Office in the U.S. District Court for the Eastern District of New York, charging the company with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA). Odebrecht agreed that the appropriate criminal fine is \$4.5 billion, subject to further analysis of the company’s ability to pay the total global penalties. In related proceedings, Odebrecht also settled with the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland.

Under the plea agreement, the United States will credit the amount that Odebrecht pays to Brazil and Switzerland over the full term of their respective agreements, with the United States and Switzerland receiving 10 percent each of the principal of the total criminal fine and Brazil receiving the remaining 80 percent. The fine is subject to an inability to pay analysis to be completed by the Department of Justice and Brazilian authorities on or before March 31, 2017, because Odebrecht has represented it is only able to pay approximately \$2.6 billion over the course of the respective agreements. Sentencing has been scheduled for April 17, 2017.

Braskem, whose American Depositary Receipts (ADRs) are publicly traded on the New York Stock Exchange, separately pleaded guilty to a one-count criminal information filed in the Eastern District of New York charging it with conspiracy to violate the anti-bribery provisions of the FCPA. Braskem agreed to pay a total criminal penalty of \$632 million. Sentencing has not yet been scheduled. In related proceedings, Braskem also settled with the U.S. Securities and Exchange Commission (SEC), the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland. Under the terms of its resolution with the SEC, Braskem agreed to a total of \$325 million in disgorgement of profits. Braskem agreed to pay Brazilian authorities 70 percent of the total criminal penalty and agreed to pay the Swiss authorities 15 percent. The department has agreed to credit the criminal penalties paid to Brazilian and Swiss authorities as part of its agreement with the company. The United States will receive \$94.8 million, an amount equal to 15 percent of the total criminal fines paid by Braskem.

Under their respective plea agreements, Odebrecht and Braskem are required to continue their cooperation with law enforcement, including in connection with the investigations and prosecutions of individuals responsible for the criminal conduct. Odebrecht and Braskem also agreed to adopt enhanced compliance procedures and to retain independent compliance monitors for three years. The cases are assigned to U.S. District Judge Raymond J. Dearie of the Eastern District of New York.

The combined total amount of United States, Brazilian and Swiss criminal and regulatory penalties paid by Braskem will be approximately \$957 million. The combined total amount of penalties imposed against Odebrecht will be at least \$2.6 billion and up to \$4.5 billion. With a combined total of at least \$3.5 billion, today’s resolutions with Odebrecht and Braskem are the largest-ever global foreign bribery resolution.

The Bribery Schemes

According to its admissions, Odebrecht engaged in a massive and unparalleled bribery and bid-rigging scheme for more than a decade, beginning as early as 2001. During that time, Odebrecht paid approximately \$788 million in bribes to government officials, their representatives and political parties in a number of countries in order to win business in those countries. The criminal conduct was directed by the highest levels of the company, with the bribes paid through a complex network of shell companies, off-book transactions and off-shore bank accounts.

As part of the scheme, Odebrecht and its co-conspirators created and funded an elaborate, secret financial structure within the company that operated to account for and disburse bribe payments to foreign government officials and political parties. By 2006, the development and operation of this secret financial structure had evolved such that Odebrecht established the "Division of Structured Operations," which effectively functioned as a stand-alone bribe department within Odebrecht and its related entities. Until approximately 2009, the head of the Division of Structured Operations reported to the highest levels within Odebrecht, including to obtain authorization to approve bribe payments. After 2009, this responsibility was delegated to certain company business leaders in Brazil and the other jurisdictions. To conceal its activities, the Division of Structured Operations utilized an entirely separate and off-book communications system, which allowed members of the Division of Structured Operations to communicate with one another and with outside financial operators and other co-conspirators about the bribes via secure emails and instant messages, using codenames and passwords.

The Division of Structured Operations managed the "shadow" budget for the Odebrecht bribery operation via a separate computer system that was used to request and process bribe payments as well as to generate and populate spreadsheets that tracked and internally accounted for the shadow budget. These funds for the company's sophisticated bribery operation were generated by the Odebrecht Finance Department through a variety of methods, as well as by certain Odebrecht subsidiaries, including Braskem. The funds were then funneled by the Division of Structured Operations to a series of off-shore entities that were not included on Odebrecht's balance sheet as related entities. The Division of Structured Operations then directed the disbursement of the funds from the off-shore entities to the bribe recipient, through the use of wire transfers through one or more of the off-shore entities, as well as through cash payments both inside and outside Brazil, which were sometimes delivered using packages or suitcases left at predetermined locations.

Odebrecht, its employees and agents took a number of steps while in the United States to further the scheme. For instance, in 2014 and 2015, while located in Miami, two Odebrecht employees engaged in conduct related to certain projects in furtherance of the scheme, including meetings with other co-conspirators to plan actions to be taken in connection with the Division of Structured Operations, the movement of criminal proceeds and other criminal conduct. In addition, some of the off-shore entities used by the Division of Structured Operations to hold and disburse unrecorded funds were established, owned and/or operated by individuals located in the United States. In all, this conduct resulted in corrupt payments and/or profits totaling approximately \$3.336 billion.

Braskem also admitted to engaging in a wide-ranging bribery scheme and acknowledged the pervasiveness of its conduct. Between 2006 and 2014, Braskem paid approximately \$250 million into Odebrecht's secret, off-book bribe payment system. Using the Odebrecht system, Braskem authorized the payment of bribes to politicians and political parties in Brazil, as well as to an official at *Petróleo Brasileiro S.A. – Petrobras* (Petrobras), the state-controlled oil company of Brazil. In exchange, Braskem received various benefits, including: preferential rates from Petrobras for the purchase of raw materials used by the company; contracts with Petrobras; and favorable legislation and government programs that reduced the company's tax liabilities in Brazil. This conduct resulted in corrupt payments and/or profits totaling approximately \$465 million.

The Corporate Resolutions

The department reached these resolutions with Odebrecht and Braskem based on a number of factors, including: the failure to voluntarily disclose the conduct that triggered the investigation; the nature and seriousness of the offense, which spanned many years, involved the highest levels of the companies, occurred in multiple countries and involved sophisticated schemes to bribe high-level government officials; the lack of an effective compliance and ethics program at the time of the conduct; and credit for each

company's respective cooperation. The companies also engaged in remedial measures, including terminating and disciplining individuals who participated in the misconduct, adopting heightened controls and anti-corruption compliance protocols and significantly increasing the resources devoted to compliance.

The criminal penalty for Odebrecht reflects a 25 percent reduction off the bottom of the U.S. Sentencing Guidelines fine range because of Odebrecht's full cooperation with the government's investigation, while the criminal penalty for Braskem reflects a 15 percent reduction off the bottom of the U.S. Sentencing Guidelines as a result of its partial cooperation.

Odebrecht has represented its ability to pay a maximum of \$2.6 billion of the total fine amount. The department and Brazilian authorities are engaged in further analysis regarding the company's claimed inability to pay, which will be completed on or before March 31, 2017.

* * *

The FBI's New York Field Office is investigating the case. Chief Dan Kahn and Trial Attorneys Christopher Cestaro, Sarah Edwards, David Fuhr, Kevin R. Gingras, Lorinda Laryea and David Last of the Criminal Division's Fraud Section and Assistant U.S. Attorneys Julia Nestor and Alixandra Smith of the Eastern District of New York are prosecuting the case.

The Criminal Division's Office of International Affairs also provided substantial assistance. The SEC and the Ministerio Publico Federal in Brazil the Departamento de Policia Federal and the Office of the Attorney General in Switzerland provided significant cooperation.

The Criminal Division's Fraud Section is responsible for investigating and prosecuting all FCPA matters. Additional information about the Justice Department's Fraud Section FCPA enforcement efforts can be found at www.justice.gov/criminal/fraud/fcpa.

Attachment(s):

[Download Braskem Information](#)

[Download Braskem Plea Agreement](#)

[Download Odebrecht Information](#)

[Download Odebrecht Plea Agreement](#)

Component(s):

[Criminal Division](#)

[Criminal - Criminal Fraud Section](#)

[USAO - New York, Eastern](#)

Press Release Number:

16-1515

Updated December 21, 2016